



# **CITY OF SUNNYVALE REPORT Planning Commission**

**October 27, 2003**

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**SUBJECT:**           **2003-0026   Jerry   Dejea** [Appellant/Applicant/Property Owner]: Application for a 12,344 square foot site located at **811 W. Homestead Road** in an R-1 (Low-Density Residential) Zoning District (APN: 323-21-034):

Motion               Appeal of a decision by the Administrative Hearing Officer denying a Variance from Sunnyvale Municipal Code Section 19.48.020 to allow a 3'-6" and 7' fence where 3' maximum is allowed in the corner and driveway vision triangles.

## **REPORT IN BRIEF**

**Existing Site Conditions**           Single family home

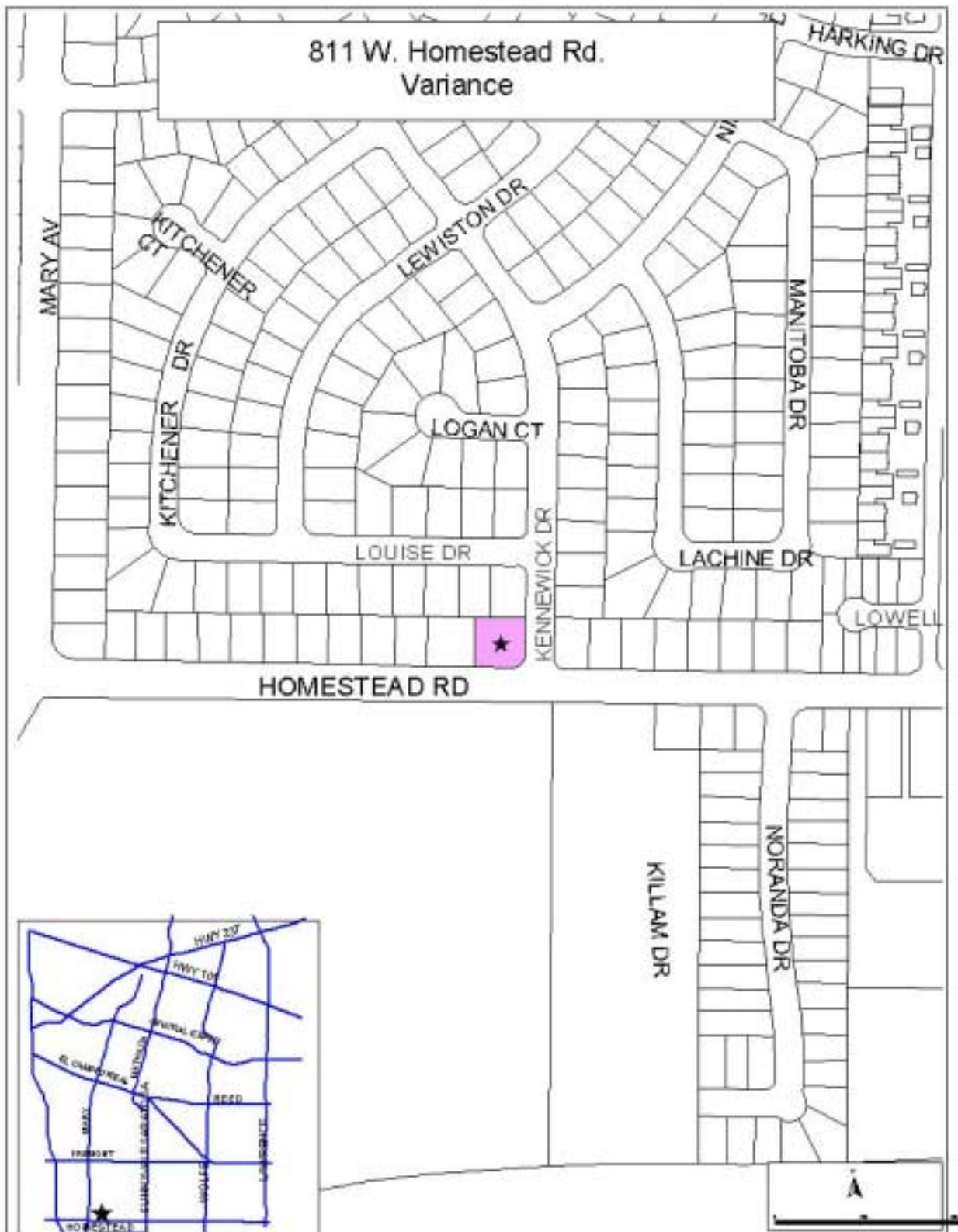
### **Surrounding Land Uses**

North	Single family homes
South	Homestead High School
East	Single family homes
West	Single family homes

**Issues**                       Public Safety  
Neighborhood Aesthetics

**Environmental Status**           A Class 11 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

**Administrative Hearing Decision Staff Recommendation**   Denial of the Variance  
Deny the appeal and uphold the decision to deny the Variance



**PROJECT DATA TABLE**

	<b><u>EXISTING</u></b>	<b><u>PROPOSED</u></b>	<b><u>REQUIRED/ PERMITTED</u></b>
<b>General Plan</b>	Low Density Residential	Same	N/A
<b>Zoning District</b>	R-1	Same	N/A
<b>Lot Size (s.f.)</b>	12,344	Same	8,000 min.
<b>Gross Floor Area (s.f.)</b>	1,729	Same	N/A
<b>Lot Coverage (%)</b>	14%	Same	40% max.
<b>Floor Area Ratio (FAR)</b>	14%	Same	N/A
<b>Setbacks (facing prop.)</b>			
• <b>Front</b>	25'	Same	20' min.
• <b>Left Side</b>	13'	Same	6' min., 15' combined
• <b>Right Side</b>	31'-6"	Same	6' min., 15' combined
• <b>Rear</b>	12'-8"	Same	10' min.

**ANALYSIS****Background**

**Previous Actions on the Site:** A Variance was approved for a corner fence for this property in 1985. That fence was removed, and a new fence was constructed by the applicant in its place. The new fence is in a different location from the one approved in 1985. The old Variance is no longer valid. The new fence requires new approval by the City.

After the fence was constructed a complaint was forwarded to the Neighborhood Preservation Division regarding the location of the new fence and the visibility at the corner and near the driveway. The applicant was directed to contact the Planning staff and apply for the appropriate permits.

The fence was evaluated by Planning and the Traffic division. Planning staff originally approved the applicant's fence with a staff level review using the Miscellaneous Plan Permit (MPP) process. It was approved with conditions

requiring modification to lower the fence height in the vision triangles to 3.5 feet.

Since the fence is already constructed, the applicant opposes changing the fence. As discussed in the staff report, the applicant has privacy issues at a busy corner near a high school and with a bus stop. The applicant appealed the MPP due to the required conditions to lower sections of his fence to 3.5 feet in the corner vision triangle and the driveway vision triangle. When the applicant appealed, staff recognized a staff error in the original approval. By code, fences cannot be higher than 3 feet in the corner vision triangle.

Instead of filing an appeal of the staff level MPP decision, it was determined that if the applicant wanted to retain the 3.5 foot high fence in the corner and driveway vision triangles a Variance was required (not an MPP appeal).

The Variance was heard at an Administrative Hearing on July 30, 2003. The hearing officer took public testimony. No neighbors or other members of the public appeared at the hearing. Staff received one letter of support and two letters of opposition to the fence (Attachment 6). The hearing officer was unable to make the required findings and denied the application for a Variance to retain the 3.5 foot fence in the corner and driveway vision triangles. Denial of the Variance made it a requirement that the fence be lowered to 3 feet in the corner and driveway vision triangles.

The applicant has appealed the decision of the Administrative Hearing Officer to deny the Variance. The issue before the Planning Commission at this time is to determine if a Variance for a 3.5 foot fence in the corner vision triangle is appropriate.

Staff was unable to make the required findings. The Planning Commission report reflects the decision of the Administrative Hearing Officer. The report recommends denial of the appeal.

If the Planning Commission considers the fence to be appropriate at a height of 3.5 feet, and can make the required findings, the appeal may be granted.

If the Planning Commission concurs with the decision of the Administrative Hearing Officer and cannot make the findings, the decision of the Administrative Hearing Officer should be upheld. The applicant can retain the 7-foot high fences around the property lines except in the corner and driveway vision triangles where it should be lowered to 3 feet maximum. **Please note that this would allow the existing front yard fence, which varies in height from 3.5' to 7', to remain as is. If the Variance had been approved, staff recommended a condition that required the design of the front yard fence to be altered to avoid an abrupt transition in height.**

The following table summarizes previous planning applications related to the subject site.

<b>File Number</b>	<b>Brief Description</b>	<b>Hearing/Decision</b>	<b>Date</b>
1985-0386	Variance to allow a 6' fence in the corner vision triangle	Administrative Hearing/Approved	8/7/85
2002-0626	MPP for a front yard and and reducible front yard fence ranging from 3'-6" to 6'-6" in height	Staff Review / Approved	10/2/02
2003-0414	Variance to allow a fence ranging from 3'-6" to 7' in the corner and driveway vision triangles.	Administrative Hearing/Denied	7/30/03

### **Description of Proposed Project**

The applicant constructed a wood fence varying in height from 3'-6" to 7' on the property lines of the front yard and the reducible front yard of the subject lot without obtaining required planning and building permits (see the parcel map, site plan and photos in Attachments 3 - 5). Portions of the fence are within the 40' corner vision triangle and the 10' driveway vision triangle, and those portions require a Variance for height. The fence is solid wood board and lattice.

### **Comments on Appeal**

The applicant has filed an appeal with the hope of the keeping the existing fence as is, citing negative impacts resulting from proximity to the school and bus stop in front of the residence. Students waiting for the bus frequently trespass onto the property destroying landscaping and invading the applicant's privacy. The applicant wishes to have a solid wood front yard fence up to 7' in height to screen the windows at the front of the house. The applicant's decision to locate the fence on the property line resulted from repeated damage to landscaping that was previously located in front of the fence. Staff weighed these impacts during the initial review to allow an additional 6" in the vision triangles and had recommended approval of the Variance.

Because the Administrative Hearing Officer could not make the required Findings, the Variance was denied. If the Planning Commission upholds the decision to deny the fence, the applicant will be required to modify the newly

constructed fence so that no portion of the fence in the corner and driveway vision triangles will exceed 3 feet.

### **Environmental Review**

A Class 11 Categorical Exemption for accessory structures relieves this project from California Environmental Quality Act provisions and City Guidelines.

### **Expected Impact on the Surroundings**

The safety of automobile passengers, pedestrians and bicyclists will be compromised if a fence greater than 3' is allowed in the corner and driveway vision triangles of the subject lot. In addition, the fence creates a walled-off appearance in a neighborhood where few residences have front yard fences.

### **Findings, General Plan Goals and Conditions of Approval**

Staff is recommending denial of this Appeal because the required Findings based on the justifications for the Variance could not be made. However, if the Planning Commission is able to make the required findings, staff is recommending the Conditions of Approval in Attachment 2.

- Findings and General Plan Goals are located in Attachment 1.
- Conditions of Approval are located in Attachment 2.

### **Fiscal Impact**

No fiscal impacts other than normal fees and taxes are expected.

### **Public Contact**

<b>Notice of Public Hearing</b>	<b>Staff Report</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>• Published in the <i>Sun</i> newspaper</li><li>• Posted on the site</li><li>• Mailed to the adjacent property owners of the project site</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City of Sunnyvale's Website</li><li>• Provided at the Reference Section of the City of Sunnyvale's Public Library</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City's official notice bulletin board</li><li>• City of Sunnyvale's Website</li></ul>

As earlier noted, the request for a Variance was presented in the July 30, 2003 Administrative Hearing. No members of the public attended the hearing, however, staff received one letter of support and two letters in opposition to the

fence (see Attachment 6). Staff also received two phone calls from nearby residents opposing the fence due to concerns with visibility and aesthetics. Because the Administrative Hearing Officer could not make the required Findings, the Variance was denied.

### **Alternatives**

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1. Deny the appeal and uphold the Variance.
2. Grant the appeal with the Conditions of Approval in Attachment 2.
3. Grant the appeal with modified Conditions of Approval.

### **Recommendation**

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Alternative 1.

Prepared by:

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Christine Cannizzo  
Project Planner

Reviewed by:

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Gerri Caruso  
Principal Planner

Reviewed by:

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Trudi Ryan  
Planning Officer

Attachments:

1. Findings
2. Conditions of Approval
3. Subject Lot Parcel Map
4. Site Plan
5. Site Photos
6. Public Correspondence
7. Administrative Hearing Minutes



## Findings - Variance

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1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

The applicant's safety and privacy are impacted by students who trespass and cause damage to the property while waiting at the bus stop. However, the design of the fence as currently constructed by the applicant impedes safety for vehicles and pedestrians at the corner location.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district.

Section 3.11 of the *Sunnyvale Single Family Home Design Techniques* recommends that fencing along front property lines and along side property lines within front yard setback areas not exceed three feet in height and that open wood fence is the preferred solution. However, with regard to corner vision triangles, the code does not make an exception for open fencing. A compromise has already been made to allow a 7' high fence along the front yard property line. The fence in the corner vision triangle needs to be reduced for safety.

3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

*Sunnyvale Municipal Code Section 19.48.020* states that no structure exceeding 3' in height may be placed in a corner or driveway vision triangle without a Variance. Staff has considered that owners of corner lots have additional responsibilities regarding public safety and that safety would be compromised by allowing the taller fence in the vision triangles. Granting of a Variance will provide a special privilege to this property owner.

### **Conditions of Approval - Variance**

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In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances and Resolutions, the Permittee expressly accepts and agrees to comply with the following Conditions of Approval.

1. This approval is for a Variance to allow a front yard, reducible front yard and left side yard fence varying in height from 3'-6" to 7' and exceeding 3 feet in height in the corner and driveway vision triangles.
2. The two-year expiration date of the Variance shall be measured from the date of the approval by the final review authority at a public hearing if the approval is not exercised.
3. All sections of the fence located in the driveway and corner vision triangle shall be reduced to 3'-6" in height.
4. The fence design shall be altered so that there is a gradual transition between the sections of the fence that vary in height.
5. The fence posts shall be trimmed and capped such that their height does not exceed the height of the adjoining section of the fence by more than 2".
6. The applicant/property owner shall obtain a building permit.
7. A site plan and elevations showing design modifications to the fence shall be approved by the Director of Community Development prior to issuance of a building permit.
8. The applicant/property owner shall reproduce the Conditions of Approval on the plans submitted for a building permit for this project.